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SUMMARY RECORD OF THE 1052nd MEETING

Held at Headquarters, New York,
on Thursday, 4 April 1991, at 3 p.m.

Chairman: Mr. POCAR

later: Mr. DIMITRIJEVIĆ (Vice-Chairman)

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Panama (continued) (CCPR/C/42/Add.7 and Add.11)

1. At the invitation of the Chairman, Mr. Cruz, Ms. Pardo and Mr. Pereira (Panama) took places at the Committee table.

State of emergency (article 4 of the Covenant) (section III of the list of issues)

2. The CHAIRMAN read out section III of the list of issues concerning the second periodic report of Panama, namely: (a) rights suspended during any state of emergency which might have been proclaimed since the consideration of the initial report in 1984; (b) clarification on whether the guarantee against confiscation of property could be suspended and, if so, whether any persons had been deprived of their property since the previous report; and (c) the meaning of Decree No. 50 of February 1990, repealing the article placing restrictions on the judicial remedy of amparo.

3. Mr. CRUZ (Panama) said, with respect to section III (a), that a state of emergency had been declared twice since 1984: once in 1987 and once in 1988. On both occasions, the Government had suspended all the guarantees that were subject to suspension under the provisions concerning states of emergency contained in article 51 of the Constitution. Concerning section III (b), he said that although the guarantee of private property acquired in accordance with the law could be suspended in a state of emergency, the guarantee against confiscation of property could not be suspended even in that circumstance. He replied to section III (c) by noting that article 2606 of the Judicial Code had prohibited the exercise of the remedy of amparo against decisions by judicial officials. That restriction had been criticized, since the remedy of amparo should be available to challenge not only arbitrary laws and decisions of the executive and legislative branches of government, but also those of the judiciary. Decree No. 50 of February 1990 provided that the remedy of amparo could be exercised against judicial decisions.

4. Mr. ANDO said that Panama had a history of successive interventions by foreign powers. Although intervention was beyond the Panamanian Government's control, it did not relieve the Government of its responsibility to ensure the protection of human rights. He welcomed the new Government's political will to strengthen its protection of human rights, and said that the reinforcement of the country's social structure would be an essential step towards safeguarding those rights. With respect to the two states of emergency which had been declared in Panama since 1984, he asked whether the Secretary-General of the United Nations had received formal notification of those situations.

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5. Mr. PRADO VALLEJO noted that under article 4 of the Covenant, a formally declared state of emergency was the only circumstance under which certain rights could be temporarily suspended. In the period following the December 1989 invasion of Panama by United States forces, almost all constitutional guarantees had been suspended under emergency measures, which had included arbitrary detentions without trial. Since Panama had therefore experienced a de facto state of emergency, he wondered whether there had been any formal decree suspending constitutional rights, if so, which rights had been suspended and for how long and whether the Committee had been properly informed through the Secretary-General in accordance with the requirements of article 4 of the Covenant.

6. Mr. CRUZ (Panama) said it was his understanding that the Government had notified the Secretary-General on the two occasions when a state of emergency had been declared in the period between 1984 and 20 December 1989; however, since he had not had direct access to such information prior to 20 December 1989, he could not confirm its accuracy. Following the United States invasion, a state of war had existed between the United States and General Noriega; the situation had not been declared a state of emergency because it had not resulted from an internal disturbance. The Government had considered that the suspension of constitutional guarantees under such circumstances would have increased the danger of human rights violations. As soon as the Government had reorganized itself after the invasion, it had functioned with all constitutional guarantees in force. In addition, the remedies of habeas corpus and amparo, which had been restricted before 20 December 1989, had been made fully applicable.

7. Mr. PRADO VALLEJO said that the conditions of respect for human rights described by the Panamanian representative had characterized the situation some time after the United States invasion. However, in the months immediately following the invasion, a state of war could not have existed unless there had been a formal declaration of war. Moreover, if Panama had indeed been at war, the provisions of the Geneva Conventions would have applied. The serious human rights violations which had been reported by various organizations were therefore in contravention of the Covenant, since there had been no decree declaring a state of emergency and suspending constitutional guarantees.

8. Mr. CRUZ (Panama) said he understood that the purpose of the hearing was not to discuss whether Panama had been at war, but to consider its second periodic report in order to monitor its compliance with the provisions of the Covenant. The important point was that the Panamanian Government had ensured full respect for human rights, without suspending constitutional guarantees, as soon as circumstances beyond its control had allowed it to do so. Its decision not to declare a state of emergency had helped to preserve the rights of Panamanians and of foreigners who were in Panama's territory at the time of the invasion.

Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26 of the Covenant) (section IV of the list of issues)

9. The CHAIRMAN read out section IV of the list of issues, concerning: (a) measures taken since the consideration of the initial report to improve the status of women, particularly in rural areas, and (b) the respects in which the rights of aliens, other than political rights, were restricted as compared with the rights of citizens.
10. Ms. PARDO (Panama) said, with respect to section IV (a), that the Panamanian Constitution contained articles prohibiting discrimination on the basis of sex, establishing equality between men and women as citizens, prohibiting the formation of political parties whose membership was restricted on the basis of sex and providing special protection for working women during and after pregnancy. Additional provisions concerning working women were set forth in the Labour Code.
11. A number of initiatives had been taken for the advancement of women in Panama. Protection of the rights of women and of the family was a function of the General Directorate for Social Welfare of the Ministry of Labour and Social Welfare, and its 1991 work plan included a series of community activities focusing on the protection of women, children and families, in which women would participate directly at the local level. In rural areas, the Ministry of Agricultural Development was establishing women's organizations that were financially supported by a national organization for rural development. Although there was a clear political will on the part of the Government to promote the advancement of women, it was encountering a number of obstacles both economic and cultural; the latter, in particular, would not be easily overcome.
12. With respect to the treatment of aliens, the Constitution established the equality of Panamanians and aliens before the law, although aliens did not have political rights and were subject to special conditions in the exercise of certain activities. In addition, certain public service posts were reserved for Panamanian nationals. The Government did not regard that practice as discriminatory but as a means of safeguarding the integrity of Panamanian nationality.
13. Mr. ANDO noted that paragraph 29 of the report (CCPR/C/42/Add.7) indicated that Panama's labour legislation excluded women from certain categories of work, and asked for details on the types of posts that were not open to women.
14. Mr. MAVROMMATIS said that, in view of the recent change of government in Panama, the Committee would need another report from the country in the near future, containing information on the changes being planned by the new Government to implement its declared intention of entrenching democracy in Panama. He asked the delegation to elaborate on the obstacles which stood in the way of women's advancement, such as illiteracy, the nation's history of

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authoritarian regimes, the economic situation and the devastation caused by war and internal disturbances. More information was also needed on the treatment of aliens, particularly those of Chinese origin. It appeared that under the previous regime, large numbers of aliens had come to Panama, in most cases from countries undergoing a transitional period in the hope of securing immigration permits. He asked for updated information on the situation of such aliens.

15. Mr. WENNERGREN said he had heard allegations that the police in Panama had treated aliens of Chinese origin in a discriminatory and sometimes abusive manner. He wished to know what could be done for aliens who had suffered such treatment and for the ethnic Chinese population as a whole. In addition, the Constitution provided that every person was free to exercise any profession or trade subject to regulations established by law. He wondered whether a person's work activities could be restricted simply on the grounds that that person was an alien.

16. Mr. SADI said that it would, indeed, be appropriate for the new Government to submit a further report, since it could not be held responsible for the report submitted by its predecessor.

17. With regard to discrimination, he noted from paragraph 45 of the second periodic report (CCPR/C/42/Add.7) that freedom to profess all religions was subject only to respect for Christian morality and public policy, and that Catholicism was recognized as being the religion of the majority of Panamanians. He wondered whether the special status accorded to Christianity did not in fact constitute discrimination against other religions. Another area in which there seemed to be discrimination was divorce, since it emerged from paragraph 49 of the report that adultery constituted grounds for divorce if the guilty party was the wife, but in the case of the husband the adultery must be "aggravated".

18. Finally, he expressed misgivings about the apparent double standard regarding citizenship whereby Panamanians who were citizens by birth enjoyed a higher status than those who were not; that was clearly contrary to the spirit, if not the letter, of the Covenant.

19. Mr. PRADO VALLEJO said that there was probably less discrimination against women in Panama than in any other Latin American country, and he was pleased to note the efforts to bring about greater equality. At the same time, he agreed with Mr. Mavrommatis and Mr. Sadi on the need for a supplementary report.

20. Mr. LALLAH said that few answers were in fact forthcoming in the report to issues regarding equality between men and women raised by the first periodic report. He was very interested to learn about the programme of affirmative action on behalf of women, but wondered why, if priority was given to such programmes, adequate resources were not made available to implement them.

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21. He was puzzled by what was meant by the term "aggravated adultery": did it mean that the husband must be discovered in flagrante delicto?

22. In connection with property rights, he asked whether women enjoyed equal participation in respect of the disposal of conjugal property.

23. Mr. CRUZ (Panama) said that his delegation noted the concerns of members of the Committee and would try to address them in its replies and in the Government's next report. He pointed out that earlier reports had concentrated on legislation and constitutional guarantees, and had failed to give a true picture of the real situation regarding human rights in Panama.

24. The allocation of resources to social programmes had been hampered over the years by the previous Government's extravagant military spending, which had saddled the country with a serious debt burden.

25. With regard to capital punishment, he said that the death penalty was prohibited by article 30 of the Constitution.

26. In connection with the Chinese population, he said that in the last years of the dictatorship large sums of money had been corruptly disbursed to Chinese nationals - many of whom had also been granted Panamanian citizenship illegally - and others. The practice had been so widespread that the new Government had recently established a Commission to investigate the problem, but its findings were not yet available.

27. The Constitution provided, in article 40, that any person was free to exercise any profession or trade, subject to the regulations established by law in respect of competence, morality, social welfare and social security, professional affiliation, public health, union membership and compulsory dues, and no taxes or assessments were required for the exercise of the liberal professions, trades and arts. In the case of the legal profession, only Panamanian nationals - whether by birth or by adoption - were entitled to practise advocacy, and the same was true of retail trading. Article 35 of the Constitution did indeed recognize the special position of the Catholic Church in Panama, but no restrictions were placed on the profession of other faiths, which enjoyed full status in law and were in no way subordinate to the Catholic Church.

28. The legal grounds for divorce had been amended and the Civil Code now placed men and women on an equal footing before the law in that regard.

29. Turning to the question of citizenship, he said that the only difference between Panamanians who were nationals by birth and those who were nationals by adoption was that the President of the Republic, judges of the Supreme Court, the Attorney-General and the Comptroller General must be Panamanian by birth.

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30. Men and women enjoyed equal rights with regard to matrimonial property and inheritance, and women were fully entitled to enter into contracts on reaching the age of majority, which was 18 years for both sexes.

31. Mr. PRADO VALLEJO said that since the invasion there had been many cases of persons seeking asylum in foreign embassies in Panama, some of them military personnel accused of serious offences committed when they were serving in the former President's National Guard. The new Government's reluctance to grant safe conduct to such persons was understandable but, if the persons concerned were recognized as political refugees by the foreign Government in whose embassy they had sought refuge, refusal to do so would contravene international conventions to which Panama was a Party. In the case of common criminals, of course, the suspect could subsequently be extradited to Panama to face charges. The current impasse with regard to the status of asylum seekers was complicating Panama's relations with neighbouring States.

32. Mr. CRUZ (Panama) said that the Panamanian Foreign Ministry was greatly concerned by the problem of asylum seekers. Panama acknowledged the right to asylum, but it was up to the country of asylum to clarify the legal situation, which in the case of some of the countries concerned remained unresolved. The Panamanian Government had suggested recourse to machinery established under the Charter of the Organization of American States, but that had not so far proved possible. He hoped that a solution would be found in the near future.

Right to life (article 6 of the Covenant) (section V of the list of issues)

33. The CHAIRMAN read out section V of the list of issues concerning the second periodic report of Panama, namely: (a) complaints during the reporting period concerning alleged disappearances or killings caused by the police or the security forces or undertaken with their support and results of investigations by the authorities of any such allegations; (b) rules and regulations governing the use of firearms by the police and security forces, violations of those rules and regulations and measures taken to prevent their recurrence; (c) steps taken to expand public health facilities and health care, particularly in rural areas; (d) the current rate of infant mortality and measures taken to reduce that rate; and (e) measures taken by the Panamanian Government to prevent the spread of the HIV virus (AIDS).

34. Mr. CRUZ said, in connection with section V (a) and (b), that before the invasion of December 1989 there had indeed been cases of disappearances and killings, for which members of the armed forces had been blamed: those cases had been investigated. For example, on 3 October 1989 a group of military personnel had staged an uprising against the Noriega Government. After surrendering, they had been imprisoned and subsequently executed by their comrades-in-arms, some of whom had now sought asylum in foreign embassies. It should be pointed out that, under the previous regime, investigations into deaths and disappearances had often been manipulated in order to acquit the accused. The Government had proposed establishing a special prosecutor's

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office to investigate such cases, and other cases relating to offences committed by members of the armed forces, including some which involved the unauthorized and excessive use of firearms, were being referred to the competent courts. The need for clear-cut rules on the use of such weapons by police and the security forces had been recognized by the new Government, and it was hoped that new regulations would soon be introduced.

35. Mr. PEREIRA (Panama), referring to section V (c), (d) and (e) of the list of issues, said that tuberculosis, malaria and most other endemic tropical diseases and infectious parasitic diseases had been brought under control. There had been a dual public health system under the former military regime - a health insurance scheme financed by employer/employee contributions, and state health insurance supposedly financed by the State. In reality, the latter, while claiming to offer greater benefits, had drawn on the resources and infrastructure of the employer/employee health insurance programme. The result was that the financial reserves of that programme had been depleted, and its facilities, overextended. The state health system, meanwhile, had been left to deteriorate. Representatives of the former regime, including one who was a qualified physician, had never disclosed those facts to the Committee. The new Government was taking steps to restore the health insurance system and would submit official long-term public health plans to the Committee shortly.

36. The infant mortality and live birth rates reflected improvements in the Panamanian health situation. For example, the live birth rate, which had remained essentially unchanged from 1985 to 1989 at between 85 and 90 per cent was currently 91.6 per cent in urban areas. Admittedly, in rural areas, it was somewhat below the 1984 rate. The infant mortality rate in urban areas was 22-24 per 1,000 live births and, in rural areas, 26-28, which meant that a national average was 26. That was still high but not as high as in neighbouring countries. The incidence of cholera was not a problem in Panama, where the drinking water supply, the sewage system and other health conditions were more advanced than in neighbouring countries.

37. Public health had been a priority ever since the nation had attained independence and the public health system had been developed over the years. Unfortunately the solid health infrastructure had been undermined by the wholesale squandering of resources by the previous Government.

38. Measures to prevent the spread of the human immunodeficiency (HIV) virus focused on a public information campaign, including publicity about the use of condoms. Because of its location, Panama was able to receive and make use of television and radio programmes about AIDS from the United States, Colombia and Costa Rica. One problem peculiar to Panama was that it served as a transit point between North and South America for thousands of persons - United States soldiers, and tourists of all nationalities.

39. Mr. WAKO said that the presence of such a high-level delegation compensated for the fact that the Panamanian report did not strictly conform to the Committee's guidelines. Within the context of the right to life, he requested figures on casualties resulting from both the 1987 riots described in paragraph 32 of the report (CCPR/C/42/Add.7) and the events of December 1989 (CCPR/C/42/Add.11, para. 15). He wondered, in the latter case, whether excessive use of force by members of the police, army or even invading troops had been investigated and whether the offenders could be held criminally liable. The very large number of civilians who had died, most of them unarmed, aroused suspicion that excessive force might indeed have been used.

40. He would appreciate more substantive details on the regulations governing police conduct, which had entered into force since December 1989, and wondered whether they were in conformity with the United Nations Code of Conduct for Law Enforcement Officials. Information should be provided on how and by whom the regulations were enforced and whether Panama had independent machinery for investigating the use of excessive force by police officers.

41. Mr. SADI asked whether the Panamanian situation had ever been reviewed by the Working Group on Enforced or Involuntary Disappearance or the Special Rapporteur on summary executions. With regard to the right to life, he asked when Panamanian abortion laws considered life to begin. Information would also be appreciated on environmental policy in Panama, on whether Panama had a drug problem and, if so, on the measures taken to control it. Lastly, he wondered whether the new democratic Government was seeking to create jobs for poverty-stricken sectors of Panamanian society.

42. Mr. WENNERGREN, referring to paragraph 15 of document CCPR/C/42/Add.11, asked whether there was a central office responsible for handling questions from the family members of persons who had died during the events of December 1989. Some of those cases might be under investigation by the special prosecutor's office referred to in the report (para. 9 (a)), and it would be helpful if relatives could trace the status of such investigations through a central office.

43. In conclusion, he wondered whether any measures had been taken to control the spread of the HIV virus by prostitutes.

44. Mrs. HIGGINS asked whether any of the deaths which had occurred in December 1989 had been caused by United States forces and, if so, whether they were subject to local criminal jurisdiction. The Panamanian reports contained very little information concerning articles 6 and 7 of the Covenant. The current report mentioned only that the right to life was guaranteed by article 17 of the Panamanian Constitution (para. 38) and made no mention of article 7 at all. The answers given by the Panamanian delegation had been extremely helpful and she hoped that Committee members' questions, combined with a reading of the Committee's general comments on articles 6 and 7, would serve as useful guidelines for future reports.

45. Mr. MAVROMMATIS said that, under article 6 of the Covenant, the Panamanian Government was duty-bound to investigate the deaths which had taken place in December 1989 - whether they had been brought about by Panamanian forces, Noriega battalions, or United States troops. Those investigations should be followed up by arrangements to provide compensation to victims' families. Care should be exercised in the implementation of measures to prevent the spread of the HIV virus, lest they result in the violation of individual rights, for example, compulsory examinations or the ostracism of patients.

46. Mr. PRADO VALLEJO said that a distinction must be drawn between the period before the invasion and that following. Prior to the invasion there had been many instances of human rights violations involving deaths and disappearances, attributable in part to President Noriega and his regime. Responsibility for those events should, however, be attributed not to specific individuals but to the State as such, which should investigate violations before, during and after the invasion.

47. Attention should be focused in particular on the use of summary execution and on what steps, if any, had been taken to provide compensation to surviving family members of victims. There had reportedly been some 3,000 deaths or disappearances after the invasion. Moreover, the destruction of families had caused serious social problems, including increased crime and homelessness. The United States Agency for International Development had made some aid available, but scarcely enough given the magnitude of the problem. In any event the right to life was in serious jeopardy in Panama. It was clear that further investigation of the situation was required. A further problem was that of mass graves, several of which remained to be opened.

48. It was the responsibility of the State of Panama to find solutions to the horrible circumstances besetting the country. The Government should submit a supplementary report to the Committee covering the points he had raised.

49. Mr. LALLAH endorsed the comments made by other speakers concerning the obligation of the State to investigate the deaths which had occurred and to provide compensation to the families of the victims. He wished to know how great a problem drugs represented in Panama, in terms of the number of deaths caused by them, where they originated, what steps were being taken to discourage drug trafficking, whether drug funds were laundered in Panama, and how closely banks were monitored.

50. Mr. Dimitrijević took the Chair.

51. Mr. CRUZ (Panama) said that the Office of the Attorney-General had responsibility for investigating deaths and disappearances, which it did without specific guidelines from the central Government.

52. The issue of deaths and disappearances had not originated with the events of December 1989 but with the seizure of power by the military Government

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in 1968. The Office of the Attorney-General was thus investigating human rights violations which had occurred over a period of 21 years; that represented an overwhelming workload given the resources available. The Office would, of course, investigate violations which had occurred subsequent to December 1989, and the Government had called upon all agencies to cooperate.

53. With regard to compensation, while various figures had been cited, it seemed that the numbers of deaths and disappearances were, in reality, low. On the question of mass graves, it simply was not true that several remained to be investigated. The Government had opened all the mass graves of which it had any knowledge.

54. As a matter of principle, responsibility for compensation lay with the culpable party. The new Government faced claims for compensation from many individuals, not only arising because of loss of life, but also because of confiscation of property. However, the Government simply did not have such vast amounts available to it.

55. With regard to drugs, the Noriega dictatorship had insisted that Panama was only a country of transit. The reality was that, in addition to being a country of transit for cocaine from Colombia, over 60 per cent of young people in Panama used drugs. While drug money was presumably laundered in Panamanian banks, that occurred in every financial centre of the world, including the United States. In fact the new Government was taking action in a range of drug-related areas, and much progress had been made. Drug-related problems were very complex, and not even the United States, with its immense resources, had been able to resolve them. Panama needed international assistance in order to be able to take further action, but the Committee could rest assured that the political will to tackle those problems now existed.

56. Turning to abortion, he said that it was an offence under the Criminal Code, punishable by imprisonment. On the question of AIDS and prostitution, prostitutes were required to undergo medical examinations every three months.

57. Mr. WENNERGREN asked whether women were punished, in practice, for undergoing an abortion.

58. Mr. CRUZ (Panama) said that not only the women but also those performing abortions were frequently punished.

59. Mr. LALLAH said that he did not agree that abortions should be punished in all circumstances.

Treatment of prisoners and other detainees (articles 7 and 10 of the Covenant)
(section VI of the list of issues)

60. The CHAIRMAN read out section VI of the list of issues concerning the second periodic report of Panama, regarding: (a) controls instituted to ensure that persons arrested or detained were not subjected to torture or to

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cruel, inhuman or degrading treatment; (b) arrangements for the supervision of places of detention by the Department of Corrections or the Office of the Attorney-General; and (c) whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with, and how they had been made known to the police, armed forces and prison personnel as well as those responsible for interrogations, and whether the relevant regulations and directives were known and accessible to prisoners.

61. Mr. CRUZ (Panama), referring to section VI (a), said that torture had been the almost exclusive preserve of the military authorities. Now that they had been removed from power, it was a virtual certainty that torture was no longer employed. In addition to ending control of prison establishments by the military, the Government had begun a series of seminars and courses to improve the treatment of prisoners held in penal institutions. Prison conditions in Panama were substandard, owing to the age of prison buildings and tremendous overcrowding, problems which the new Government had not been able to resolve in its 14 months in office. In fact there was a need for a completely new prison infrastructure. The Government had so far devoted its efforts to eliminating any further possibility of inflicting cruel, inhuman or degrading treatment now or in the future.

62. With regard to section VI (b), the Committee should note that under the previous regime no one, not even from the Department of Corrections or the Office of the Attorney-General, had been able to enter prisons without the express authorization of the military. That situation had been rectified by the new Government, with the result that the physical integrity and life of a prisoner were now protected. With regard to section VI (c), copies of the Rules had been provided to the relevant officials, but much still remained to be done in the form of familiarization and training courses, and United Nations assistance would be needed for that purpose.

63. Mr. PRADO VALLEJO said that it was obvious that the treatment of prisoners had improved under the new Government. Nevertheless, given that there had been serious instances of torture and abuse following a peaceful demonstration in August 1990, he asked whether the Government had taken steps to ensure that the police changed their treatment of prisoners. Many of the police officers were, of course, the same as under the previous regime, and seemed to be using force as they had before.

64. Mr. WAKO welcomed the establishment of the National Advisory Commission on the bill relating to the national prison system, and asked whether any prison deaths were due to shortages of food and medical attention, as happened in many third world countries. Further, he inquired whether there was a problem of overcrowding, and what measures were being taken in response.

The meeting rose at 6 p.m.